Supreme Court, U.S.
FILED
FEB 26 1999
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No. 98-1198

In The

# Supreme Court of the United States

October Term, 1998

DANIEL SCOTT COX,

*Petitioner,*

v.

UTAH LABOR COMMISSION, et al.,

*Respondents.*

On Petition For Writ Of Certiorari
To The Supreme Court Of Utah

## RESPONDENTS' BRIEF IN OPPOSITION

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COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

## QUESTIONS PRESENTED

1. Whether this Court has jurisdiction where the Supreme Court of Utah has denied Petitioner's request for certiorari of an opinion from the Utah Court of Appeals wherein that court properly concluded that it did not have subject matter jurisdiction over Mr. Cox's appeal of an order of an administrative law judge of the Utah Labor Commission denying Mr. Cox's motion for summary judgment.

2. Whether this Court should impose sanctions under Rule 42, Rules of the Supreme Court of the United States, on the basis that Mr. Cox's petition is frivolous and without merit.

## PARTIES TO THE PROCEEDING

The Respondents to the petition are the Labor Commission of Utah, ICON Health & Fitness, Inc., and Liberty Mutual Insurance Co.

The following are parents of respondent ICON Health & Fitness, Inc.: INF Capital, Inc., INF Holding, Inc., and ICON Fitness Corporation. There are no non-wholly owned subsidiaries of respondent ICON Health & Fitness, Inc.

Liberty Mutual Insurance Co. has no parent company and no non-wholly owned subsidiaries.

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## STATEMENT OF THE CASE

### I. Nature of the Case and Course of the Proceedings.

This case involves Mr. Cox's claim for workers compensation benefits which was filed with the Labor Commission of Utah on or about November 8, 1996.[1] Mr. Cox's alleged date of injury is March 11, 1996. From the inception of the adjudication of his claim, Mr. Cox, acting as a *pro se* claimant with the assistance of his non-legally trained father,[2] has submitted voluminous pleadings which have been frivolous and, for the most part, incomprehensible.

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[1] Respondents are unable to make appropriate references to the "Record" in this matter because there is no prepared record from the Utah Labor Commission. Since there has been no evidentiary hearing in this case, the Utah Court of Appeals requested only that the Labor Commission organize its file, but not have it paginated or indexed. Furthermore, Petitioner submitted a transcript of the pre-hearing conference directly to the Utah Court of Appeals, indicating that Respondents and the Labor Commission could purchase their own copy if needed. Consequently, this transcript was never made part of the record. Finally, many of the voluminous pleadings submitted by Petitioner to the Labor Commission were deemed premature, and Mr. Cox was specifically instructed to resubmit them to the administrative law judge at the hearing if he wanted them to be admitted into evidence. Respondents have consequently attached the relevant Orders and/or documents from the Labor Commission as well as the Utah appellate court orders in the attached appendix.

[2] Mr. Cox has repeatedly asserted that his father is his "attorney in fact" and therefore able to represent him in this matter. He has further claimed "fees" for his father in excess of $300,000.00 for his father's time in working on this case.

In an effort to obtain some semblance of order and decorum in the proceedings, Administrative Law Judge Donald L. George held a pre-hearing conference with the parties on March 11, 1997. At that time, ALJ George allowed Mr. Cox to raise any and all motions which he had at that time. Mr. Cox raised twenty-two (22) individual motions, all of which were ultimately denied. ALJ George further ruled that any and all other motions previously raised by Mr. Cox were deemed waived. Respondents ICON Health & Fitness, Inc. and Liberty Mutual Insurance Co. (hereafter referred to as "the Employer Respondents") moved to dismiss Mr. Cox's claim on the basis of the lack of medical evidence of a work-related injury. ALJ George reserved the Employer Respondents' motion, allowing Mr. Cox additional time to obtain medical evidence. ALJ George further ordered Mr. Cox to cooperate with discovery and prepare the case for a hearing on the merits. ALJ George cautioned Mr. Cox against the continued practice of filing voluminous and repetitious pleadings, explaining that continued abuse could lead to potential monetary sanctions. Finally, ALJ George allowed Mr. Cox to amend his Application for Hearing to include a claim for psychological injuries. On March 18, 1997, only one week after the pre-hearing conference, Mr. Cox filed a motion for summary judgment, the motion which is the alleged basis of Mr. Cox's present appeal.

On April 10, 1997, Mr. Cox's chosen physicians, Dr. Michael K. Hardy and Dr. Cynthia Lewis-Younger, reported that they found *no* evidence of any physical impairment from the alleged accident. The physicians

suggested that Mr. Cox pursue an evaluation with a qualified mental health care professional to evaluate a possible psychological impairment. (A copy of this report is attached in the Appendix at A-1.)

During this time, Mr. Cox filed a motion to recuse ALJ George, a motion which was ultimately denied by the Labor Commission, and sent a number of letters to the Labor Commission and to third parties which included defamatory and libelous statements concerning the Employer Respondents and their counsel.

On July 14, 1997, ALJ George faxed an informal order to the parties ruling that Mr. Cox's Motion for Summary Judgment, requests for sanctions, and request for a transcript were denied. ALJ George further ruled that the Employer Respondents' Motion to Dismiss was also denied. Judge George indicated his willingness to "get to the merits of this case by proceeding toward a hearing." (A copy of this document is attached in the Appendix at A-6.)

Petitioner filed numerous documents with the Labor Commission which, taken together, may have collectively amounted to a Motion for Review (an administrative appeal) of ALJ George's denial of Mr. Cox's motions. In response to Mr. Cox's submissions, the Labor Commission responded through its General Counsel, Alan Hennebold, on September 17, 1997, explaining to Mr. Cox that claims before the Labor Commission are to be handled in an orderly fashion pursuant to the Utah Administrative Procedures Act, the first step of which is to hold an evidentiary hearing before an administrative law judge. He concluded, "I understand you have not completed

this stage of the process. Consequently, it would be improper for the Labor commission to interfere. It would also be improper for the Labor commission to receive your arguments and exhibits without providing the opposing party a similar opportunity." Mr. Hennebold concluded that the items sent in by Mr. Cox would not be considered a part of the record, but rather Mr. Cox would have the opportunity to submit them as a part of the evidence or argument during his hearing before the ALJ. (A copy of Mr. Hennebold's September 17, 1997 letter is attached in the Appendix at A-8.) The Labor Commission scheduled the matter for an evidentiary hearing on March 17, 1998.

On December 8, 1997, Mr. Cox ignored the Labor Commission's instruction and filed a Petition for Review with the Utah Court of Appeals.[3] (A copy of Mr. Cox's Petition for Review is attached in Appendix at A-10.) On January 12, 1998, the Utah Court of Appeals entered a Sua Sponte Motion for Summary Disposition. On June 4, 1998, the Utah Court of Appeals entered a Memorandum Decision [Not for Official Publication], dismissing Mr. Cox's case, finding that it did not have subject matter jurisdiction over Mr. Cox's appeal. (A copy of the decision is attached in the Appendix at A-14). The Utah Court of Appeals denied, without prejudice, Respondents'

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[3] Although Mr. Cox had filed an appeal, he nevertheless continued to file voluminous pleadings with the Labor Commission and the Utah Court of Appeals, including a sixty-three (63) page "Request for Admissions and Stipulations" with 419 requests.

request for sanctions against Mr. Cox for filing frivolous documents with the court, stating:

> Petitioner has filed numerous documents in this court, including letters pertaining to settlement negotiations and "notices" of various allegations. Petitioner is hereby put on notice that filing such material in this court is inappropriate, particularly given the ongoing agency proceedings and this court's lack of subject matter jurisdiction. We deny the request for sanctions without prejudice to renewal if petitioner continues to make meritless filings in this court.

*Id.* Mr. Cox filed a Petition for rehearing with the Utah Court of Appeals on June 11, 1998, which was denied on July 2, 1998. (A copy of the Utah Court of Appeals' Order is attached in the Appendix at A-18.)

Mr. Cox filed a Petition for Writ of Certiorari with the Supreme Court of Utah on July 30, 1998, which was denied by the court on October 30, 1998. (A copy of the Supreme Court of Utah's Order is attached in the Appendix at A-20.) This case was accordingly remitted to the Labor Commission on August 18, 1998. (A copy of the Utah Court of Appeals' Remittitur is attached in the Appendix at A-22.)

Mr. Cox filed his Petition for Writ of Certiorari with this Court on January 23, 1999.

## II. Statement of Facts.

Because this matter has not undergone an evidentiary hearing at the Labor Commission, there have been no findings of fact by an administrative law judge to which

the parties may refer for this Statement of Facts. As background information for this Court, Respondents submit the following:

1. On November 8, 1996, Petitioner filed an Application for Hearing with the Labor Commission of Utah wherein he alleged to have suffered "an inhalant exposure" on March 11, 1996. On December 13, 1996 Respondents filed an Answer.

2. Some discovery ensued following the filing of Respondents' Answer. However, Petitioner chose to file numerous appeals rather than submit to an evidentiary hearing.

## ARGUMENT

### I. The United States Supreme Court Does Not Have Jurisdiction To Review this Matter.

Petitioner has asserted that this Court has jurisdiction to review this matter pursuant to 28 U.S.C. § 1257(a) (1998), which provides as follows:

> *Final judgments or decrees rendered by the highest court of a State* in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any state is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or

> statutes of, or any commission held, or authority exercised under the United States.

(Emphasis added).

Jurisdiction of this Court is limited to *final judgments* in order to avoid piecemeal litigation. *North Dakota State Board of Pharmacy v. Synder's Drug Stores, Inc.*, 414 U.S. 156 (1973). Consequently, an appeal to this Court must not be merely interlocutory or intermediate. *Market S.R. Co. v. Railroad Commission of California*, 324 U.S. 548 (1945).

In the present case, Mr. Cox has never received a final appealable order from the Utah Labor Commission, let alone a final appealable order from the Utah appellate courts. Rather, the Utah Court of Appeals concluded that it did not have subject matter jurisdiction over this case because there was no order from the Utah Labor Commission which constituted final agency action.

Mr. Cox is apparently under the erroneous impression that he has some form of a constitutional right to an order from the Utah Labor Commission to award him workers compensation benefits prior to an administrative hearing on his claim. Mr. Cox has been repeatedly advised that this is incorrect, and that he should proceed to a hearing on his case. He is apparently unwilling to accept this instruction from all Utah courts, and has therefore filed yet another frivolous appeal – the petition with this Court.

From its earliest days, this Court has declared that a real, not fictitious, federal question is essential to jurisdiction of the Supreme Court of United States over judgments of state courts. *Caldwell v. Texas*, 137 U.S. 692 (1891). Moreover, this Court is without jurisdiction of

writ of error to state court where there is no substance or color of merit in the federal question upon which jurisdiction depends. *Wabash R. Co. v. Flannigan*, 192 U.S. 29 (1904); *accord Parker v. McLain*, 237 U.S. 269 (1915) (federal question which rests upon obviously false assumption is so plainly devoid of merit as to afford no basis for exercise by Federal Supreme Court of its appellate jurisdiction of state court); *Wick v. Chelan Electric Co.*, 280 U.S. 108 (1929) (Supreme Court is without jurisdiction to review judgment of state court where constitutional objections raised by appellant are unsubstantial). Although Mr. Cox has fashioned his petition in terms of claimed constitutional deprivations, his objections lack any basis in law or fact. Accordingly, Respondents respectfully request that the Petition for Writ of Certiorari be denied.

## II. Pursuant to Rule 42 of the Rules of the Supreme Court of the United States, this Court Should Award Damages Against Petitioner for Filing a Frivolous Petition.

Rule 42(2) of the Rules of the Supreme Court provides as follows:

> When a petition for a writ of certiorari, an appeal, or an application for other relief is frivolous, the Court may award the respondent or appellee just damages, and single or double costs under Rule 43. Damages or costs may be awarded against the petitioner, appellant, or applicant, against the party's counsel, or against both party and counsel.

As explained above, Mr. Cox's petition is an attempt to invoke this Court's jurisdiction on an utterly frivolous

claim. Mr. Cox has been *repeatedly* cautioned over the past two years that the continued practice of filing frivolous and meritless documents could subject him to sanctions. Notwithstanding these warnings, Mr. Cox has continued his paper war with the filing of this petition, causing Respondents to incur additional costs in responding to yet another round of appeals before the case even proceeds to an administrative hearing.

In *Talamini v. Allstate Insurance Co.*, 470 U.S. 1067 (1985) (minority opinion), Chief Justice Burger and Justices Rehnquist and O'Connor joined in an opinion supporting the use of the sanction of Rule 42(2) in egregious cases. In *Talamini*, the appellant had appealed the district court's dismissal of one of two counts of a complaint. The federal circuit court had dismissed the appeal on the ground that it lacked jurisdiction because the district court's decision was not a final judgment. The appellant then filed a petition with this Court, claiming that the circuit court's dismissal of her appeal was erroneous and a violation of due process. Chief Justice Burger stated:

> Not only is appellant's appeal to this Court completely frivolous on the merits, but also her attempt to bring the case here by way of appeal is totally improper; appellate jurisdiction is plainly lacking. . . . I would grant the motion to the extent of awarding appellee $1,000 . . . pursuant to this Court's Rule 49.2.[4]

*Id.* Chief Justice Burger further explained,

> Judicious use of the sanction of Rule 49.2 in egregious cases – and this is an egregious case –

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[4] This Rule has been renumbered as Rule 42(2).

> should discourage many of the patently meritless applications that are filed here each year. In the long run, this is the more effective way to minimize the time devoted to the disposition of applications that are plainly without merit . . . after all, that is the whole purpose of Rule 49.2. Further, while freedom of access to the courts is indeed a cherished value, every misuse of any court's time impinges on the right of other litigants with valid or at least arguable claims to gain access to the judicial process. The time this Court expends examining and processing frivolous applications is very substantial, and it is time that could be developed to considering claims which merit consideration.

*Id.*

The facts of the present case are very similar to *Talamini*. Mr. Cox has filed volumes of frivolous motions, filings, and appeals, all of which have been properly denied. Furthermore, Mr. Cox has been repeatedly cautioned against this practice, only to have him file yet another appeal. This abuse of process should not be condoned by this Court, and Mr. Cox should be properly sanctioned with the entry of just damages to Respondents.

## CONCLUSION

This Court lacks jurisdiction over this appeal. The Order from which Mr. Cox has appealed is an informal ruling from the administrative law judge denying his motion for summary judgment. Mr. Cox has been repeatedly instructed to proceed to a hearing in this matter, but

instead has chosen to pursue meritless and frivolous appeals. The Utah Court of Appeals properly determined that it did not have subject matter jurisdiction over this case inasmuch as there was no final appealable order. The Utah Supreme Court denied Mr. Cox's petition for certiorari. Mr. Cox's attempt to bring the case before this Court is totally improper since jurisdiction is plainly absent. Mr. Cox's abuses should not be tolerated. Respondents respectfully request that this Court impose sanctions against Mr. Cox in the suggested sum of $1,000.00, plus costs on appeal.

Dated this 26th day of February 1999.

Respectfully submitted,

PAUL C. DROZ*
MICHAEL E. DYER
DORI K. PETERSEN
*Counsel for Respondents*
*ICON Health & Fitness, Inc.*
*and Liberty Mutual Insurance Co.*
77 West 200 South, Suite 400
Salt Lake City, Utah 84101-1609
(801) 521-7900

* *Counsel of Record*

THE (LOGO)
UNIVERSITY
OF UTAH

10 April 1997

Mr. Daniel Scott Cox
1199 Cliffside Dr.
Logan, UT 84321
Phone (801) 752-3013

Re: Case No. 961068, Industrial Commission of Utah

Dear Mr. Cox:

This letter is in response to your request for evaluation of your medical record. After review of the medical records pertaining to this case, we offer our answers to the questions you posed in your request.

*1. Is the onset and subsequent recurrence of your medical condition consistent with an inhalation injury?*

Your medical condition, currently diagnosed as anxiety/panic disorder, was diagnosed subsequent to the inhalation exposure in question which occurred on March 11, 1996. The symptoms from that exposure and in the ensuing weeks and months, as described in your medical records, are consistent with that diagnosis. There is no evidence in your medical records that this was a preexisting condition, nor is there evidence from your work performance evaluation and attendance prior to this incident that you had any of these symptoms prior to March 11, 1996, based on the information available to us.

Data about rates of anxiety/panic disorders following such exposures is limited at best. In your case, the medical records do verify that a documented inhalation exposure took place on March 11, 1996 and your symptoms have been present since then. This suggests a temporal relationship to this incident.

Because the respirator you were using that day was never evaluated, it would be impossible to objectively evaluate for a specific chemical exposure. There is no documented objective evidence of chronic disease of any organ system (such as lung, heart, liver, kidney, etc.). Even so, the onset of your medical condition, which is psychologic in nature, follows the inhalation exposure which took place on March 11, 1997 [sic], suggesting a relationship. However, it would be difficult to verify this relationship.

2. *Are your symptoms consistent with an inhalation injury to some specific area or organ of your body?*

As stated above, there is no evidence of organ system damage. It is possible for an inhalation exposure to result in an ongoing psychologic disorder for which one would need treatment, as has been reported in some cases of exposure in the environment.

3. *Even if you had some pre-existing condition, would it be our medical opinion that this condition was aggravated by work place conditions such that your health problems of the last year were cause* [sic] *by your work environment?*

Again, there is no evidence of a pre-existing condition. If, however, there were a pre-existing condition, especially a condition which was subclinical, the incident of March 11, 1996 might have aggravated this condition and your

health problems could therefore be related to your work environment.

4. *Do you now have a sensitivity to welding fumes, chemical fumes, etc., which you did not previously have?*

By subjective report you do seem to be sensitive to such fumes, as evidenced by the temporal relationship as described above. However, records indicate that you have reacted in similar fashion away from your work environment as well. There is no way to objectively measure and verify that your particular symptom complex is due to a sensitivity to fumes.

5. *Have you sustained a physical impairment as a result of your working environment?*

There is no evidence in the medical records of a physical impairment. However, a psychologic impairment could exist.

According to the American Medical Association *Guides to the Evaluation of Permanent Impairment,* Fourth Edition (1995), impairment is defined as an alteration of an individual's health status, is assessed by medical means, is a medical issue, and represents a deviation from normal in a body part or organ system and its functioning. Permanent impairment is defined as one that has become static or stabilized during a period of time sufficient to allow optimal tissue repair. It is unlikely to change in spite of further medical or surgical therapy. Impairments are conditions that interfere with an individual's activities of daily living.

The World Health Organization defines an impairment as "any loss or abnormality of psychological, physiological

or anatomical structure or function." Disability is defined in the *Guides* as an alteration of an individual's capacity to meet personal, social, or occupational demands, or statutory or regulatory requirements, because of an impairment. This refers to an activity or task the individual cannot accomplish, and arises out of the interaction between impairment and external requirements, especially those of a person's occupation. An impaired individual is not necessarily disabled.

In answer to your question as to whether an impairment rating is possible in your case, there is a section in the *Guides* that addresses this issue, section 14.7. A Method of Evaluating Psychiatric Impairment. This edition of the *Guides* does not use a percentage for estimation of mental impairment due to the highly subjective nature of assessing by percentage found when using percentages in previous editions of the *Guides*. Instead, Classification of Impairments Due to Mental and Behavioral Disorders is presented as a table, listing Classes 1 through 5, in ascending order of severity. An impairment rating utilizing this system may be possible in your case, but would require the evaluation of a qualified mental health care professional. You could not receive a rating, however, until you have improved to the greatest extent possible.

We would recommend that if you elect to request an impairment rating, you do so in cooperation with your employer and Worker's Compensation Insurance carrier. A thorough evaluation by a mutually acceptable provider should be utilized for this purpose.

Sincerely,

/s/ M. K. Hardy
Michael K. Hardy, M.D., M.P.H.
Resident, Occupational Medicine Clinic

/s/ Cynthia R. Lewis-Younger, M.D., M.P.H.
Cynthia Lewis-Younger, M.D., M.P.H.
Assistant Director, Occupational Medicine Clinic

*FAX COVER SHEET*

(LOGO)

___1___ PAGES INCLUDING " "
DATE: JULY 14, 1997
FROM: JUDGE GEORGE
ADJUDICATION DIVISION
FAX#: 530-6804 TEL#: 530-6865

| *TO* | *FAX #* | *TEL #* |
|---|---|---|
| *Cox, D* | *(By Mail)* | |
| *Dyer, M* | *521-7965* | *521-7900* |

*RE: Cox D 96-1068*

*Mr. Cox – you may disregard the impending dismissal portion of my 4/21/97 fax as I understand you have provided the requested hair sample, and I have the further impression that you have or will co-operate in the respondents medical examinations.*

*Having said that, we will get to the merits of this case by proceeding toward a hearing. Accordingly, both your Motion for Summary Judgment and the Respondents Motion for Dismissal are denied. Your requests for sanctions are denied. Your request for a transcript is denied. Your options in that respect are to hire a court reporter or purchase a copy of the PHC tape from Ms. Mele or come and listen to a copy of the tapes here. The latter two are much less expensive than the former if you just want to refresh yourself on that proceeding. However, the former is better for purposes of appeal.*

*Mr. Dyer – pursuant to your 3/17/97 letter, please advise within 20 days, 1) when Mr. Cox's outstanding discovery will be answered, if not already done; 2) what, if any, respondents*

*medical exams remain to be done, or when they are scheduled for.*

*CERTIFICATE OF MAILING*

*I certify that I have mailed the foregoing FAX to the following by first class prepaid postage this ___ day of JULY, 1997:*

*DANIEL COX, 1199 CLIFFSIDE DR., LOGAN UT 84321*

(LOGO) LABOR COMMISSION (LOGO)

Michael O. Leavitt, Governor
R. Lee Ellertson, Commissioner

September 17, 1997

MR. DANIEL SCOTT COX
1199 CLIFFSIDE DRIVE
LOGAN UTAH 84321

RE: Workers' Compensation and Occupational Safety Complaints

Dear Mr. Cox:

By this letter I am replying to your letter of September 8 addressed to me, and your letter of September 12, addressed to Commissioner Ellertson. You state that you are caught on an "administrative merry-go-round". While I can understand that you might feel that way at times, it is a prime goal of the Labor Commission to make its programs accessible and understandable to both employers and workers. I hope the following information will help.

The Utah Workers' Compensation Act and the Utah Occupational Safety and Health Act, in conjunction with the Utah Administrative Procedures Act, establish a simple and orderly procedure for adjudicating disputes. As I understand the situation, you have filed claims under both Acts. Each claim will be handled according to established procedure. You have the right to administrative review if you disagree with the determination reached on either claim. Finally, if you remain dissatisfied after you

have exhausted your administrative remedies, you can obtain appellate review at the Utah Court of Appeals.

The system I have just described applies not only to you, but to your employer and to the Commission itself. Both you and your employer have the right to present your arguments and evidence to an ALJ. I understand you have not yet completed this stage of the process. Consequently, it would be improper for the Labor Commissioner to interfere. It would also be improper for the Labor Commissioner to receive your arguments and exhibits without providing the opposing party a similar opportunity.

For the foregoing reasons, the Commission will not consider your recent letters and the material attached to them as part of the record in your adjudicative proceedings. I will retain the letters and materials in a separate file. If you wish to have these materials considered as part of the evidence or argument in your adjudicative proceedings, you must present them to the ALJ.

It is my desire to assist you in following proper procedures to present your claims. While I cannot discuss the merits of your claim with you, please feel free to call me at 530-6937 if you have any procedural questions.

Very truly yours,

/s/ Alan Hennebold
Alan Hennebold
General Counsel
Utah Labor Commission

cc: Proform Fitness/Weslo
Liberty Mutual Insurance, c/o Michael Dyer, Esq.

Daniel Scott Cox
Acting Pro Se
1199 Cliffside Dr.
Logan, Utah 84321
Ph. 801-752-3013

UTAH COURT OF APPEALS

| | | |
|---|---|---|
| DANIEL SCOTT COX | : | |
| Petitioner, | : | PETITION FOR |
| vs. | : | REVIEW, REVERSAL |
| UTAH STATE INDUSTRIAL COMMISSION; PROFORM FITNESS/WESLO and/or LIBERTY MUTUAL INSURANCE COMPANY, | : | AND AWARD |
| | : | CASE NO. _____ |
| Respondents. | : | |

On 14 July 1997, the Administrative Law Judge (ALJ) presiding over Industrial Commission Case 961068 dismissed eight *Uncontested* Motions by Petitioner without finding of fact. Included were an Uncontested Motion for Summary Judgment, and seven Uncontested Motions for Sanctions regarding Respondents actions which infringe upon Petitioner's rights to due process and/or violate Utah law.

Pursuant to R568-1-4M and *Utah Code Ann.* Section 63-46b-12, Petitioner filed an Appeal dated 30 July 1997 with the Agency as required. The Agency has subsequently failed to respond to all inquiries regarding status, has failed to rule in a timely manner, and now seeks to

hold hearings without dispositioning the Appeal (See attached letter dated 4 November 1997) or protecting Petitioner from the improper and illegal actions of Respondents.

Petitioner, Daniel Scott Cox, Pro Se, pursuant to UCA 63-46(b)-12, and Rule 14 of the Rules of the Utah Court of Appeals, now petitions this Court for a Review of the action of the Administrative Law Judge to dismiss or deny these Uncontested Motions, and seeks Reversal and Award in favor of Petitioner. And Petitioner also seeks review of three issues believed to be issues of "First Impression" related to these Motions and/or the denial/dismissal there-of.

DATED THIS 8 DAY OF DECEMBER 1997

By /s/ Daniel Scott Cox
Daniel Scott Cox, Pro Se

IN THE UTAH COURT OF APPEALS

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| | | |
|---|---|---|
| DANIEL SCOTT COX | : | |
| Petitioner, | : | SUA SPONTE |
| vs. | : | MOTION FOR |
| UTAH STATE INDUSTRIAL COMMISSION; PROFORM FITNESS/WESLO and/or LIBERTY MUTUAL INSURANCE COMPANY, | : | SUMMARY DISPOSITION |
| | : | Case No. 970721-CA |
| Respondents. | : | |

(Filed Jan. 12, 1998)

TO THE ABOVE PARTIES AND THEIR ATTORNEYS:

A docketing statement has been filed with the Court of Appeals in the above-captioned case. This case is being considered for summary dismissal, pursuant to Utah Rules of Appellate Procedure 10(e). The grounds for dismissal are that this court lacks jurisdiction because the appeal is not taken from a final, appealable order, or alternatively, that no timely notice of appeal was filed. In lieu of a brief, each party shall file a memorandum, not to exceed ten pages, explaining why summary disposition should, or should not, be granted by the court. Failure to respond may result in the granting of this motion.

An original and four copies of the memorandum should be filed with the clerk of the Utah Court of Appeals on or before January 30, 1998.

DATED this 12th day of January, 1998.

/s/ Gregory K. Orme
Gregory K. Orme, Judge

IN THE UTAH COURT OF APPEALS

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| | | |
|---|---|---|
| Daniel Scott Cox,<br><br>Petitioner,<br><br>v.<br><br>*Proform Fitness/Weslo: Liberty Mutual Insurance Company*; and/or Utah State Industrial Commission,<br><br>Respondents. | ) | MEMORANDUM DECISION (Not For Official Publication)<br><br>Case No. 970721-CA<br><br>FILED (June 4, 1998) |

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Original Proceeding in this Court

Attorneys: Daniel Scott Cox, Logan, Petitioner Pro Se
Michael E. Dyer, Salt Lake City, for Respondents Proform Fitness/Weslo and Liberty Mutual Insurance Company

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Before Judges Billings, Greenwood, and Jackson,

PER CURIAM:

This case is before the court on a sua sponte motion for summary dismissal and on petitioner's motion for protective orders and motion for summary reversal. Respondents also request an award of sanctions against petitioner.

This court has subject matter jurisdiction over "final orders and decrees resulting from formal adjudicative proceedings of state agencies" including the Utah Labor Commission. Utah Code Ann. § 78-2a-3(2)(a) (1996). Utah

Code Ann. § 63-46b-14 (1997) governs "judicial review of final agency action." With limited exceptions not applicable in this case, "[a] party may seek judicial review only after exhausting all administrative remedies available." *Id.* § 63-46b-14(2). A party must file a petition for judicial review of final agency action with the appellate court within 30 days after the date that the order constituting the final agency action is issued. *See id.* § 63-46b-14(3); Utah R. App. P. 14(a).

Petitioner filed a request for judicial review of the July 14, 1997 order of an administrative law judge denying petitioner's motion for summary judgment and respondents' motion to dismiss. The ALJ ordered the case to proceed to an evidentiary hearing. Because no hearing has occurred in the agency, no agency decision constituting final agency action has issued. Accordingly, petitioner has not exhausted his administrative remedies, and judicial review of the July 14, 1997 order is not available.

This court lacks subject matter jurisdiction and must dismiss the petition for judicial review. *See Varian-Eimac v. Lamoreaux*, 767 P.2d 569, 570 (Utah Ct. App. 1989).

Respondent seeks sanctions against petitioner for filing a frivolous action in this court. Petitioner has filed numerous documents in this court, including letters pertaining to settlement negotiations and "notices" of various allegations. Petitioner is hereby put on notice that filing such materials in this court is inappropriate, particularly given the ongoing agency proceedings and this court's lack of subject matter jurisdiction. We deny the request for sanctions without prejudice to renewal if petitioner continues to make meritless filings in this court.

We dismiss the petition for lack of jurisdiction.

/s/ Judith M. Billings
Judith M. Billings, Judge

/s/ Pamela T. Greenwood
Pamela T. Greenwood, Judge

/s/ Norman H. Jackson
Norman H. Jackson, Judge

## CERTIFICATE OF MAILING

I hereby certify that on the 4th day of June, 1998, a true and correct copy of the attached MEMORANDUM DECISION was deposited in the United States mail to:

Daniel Scott Cox
Pro Se
1199 Cliffside Dr
Logan UT 84321

Michael E. Dyer
Blackburn & Stoll
77 W 200 S
Salt Lake City UT 84101-1609

and a true and correct copy of the attached MEMORANDUM DECISION was placed in Interdepartmental Mailing to be delivered to:

Alan Hennebold, Esq.
Utah Labor Commission
160 E 300 S
PO Box 146615
Salt Lake City UT 84114-6615

/s/ Hollie Hayes
Judicial Secretary

Original Proceeding in this Court
AGENCY CASE NO.: 961068

APPEALS CASE NO.: 970721-CA

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IN THE UTAH COURT OF APPEALS

| | |
|---|---|
| Daniel Scott Cox,<br>Petitioner,<br>v.<br>Utah State Industrial Commission; Proform Fitness/Weslo and/or Liberty Mutual Insurance Company,<br>Respondents. | ORDER<br>Case No. 970721-CA<br>(Filed July 2, 1998) |

This matter is before the court upon petitioner's petition for rehearing, filed June 11, 1998.

IT IS HEREBY ORDERED that the petition for rehearing is denied.

Dated this 2nd day of July, 1998.

FOR THE COURT:

/s/ Norman H. Jackson
Norman H. Jackson, Judge

CERTIFICATE OF MAILING

I hereby certify that on July 2, 1998, a true and correct copy of the foregoing ORDER was deposited in the United States mail to the parties listed below:

Daniel Scott Cox
Pro Se
3480 S 300 E #13
Salt Lake City UT 84115

Michael E. Dyer
Blackburn & Stoll
77 W 200 S
Salt Lake City UT 84101-1609

Utah Labor Commission
Alan Hennebold
160 E 300 S
PO Box 146615
Salt Lake City UT 84114-6615

Dated this July 2, 1998.

By /s/ Susan Willis
Deputy Clerk

Case No. 970721-CA

IN THE SUPREME COURT OF THE STATE OF UTAH

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Daniel Scott Cox,

Petitioner,

vs.

Utah State Industrial (Labor) Commission; Proform fitness/Weslo and/or Liberty Mutual Insurance Company,

Respondent.

No. 981422-SC
970721-CA
961068

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ORDER

This matter is before the Court upon a petition for writ of certiorari, filed pursuant to Rule 48, of the Utah Rules of Appellate Procedure.

IT IS HEREBY ORDERED that the petition for writ of certiorari filed on July 30, 1998, by the petitioner Daniel Scott Cox is denied.

FOR THE COURT:

/s/ Richard C. Howe
Richard C. Howe
Chief Justice

Oct. 30, 1998
Date

CERTIFICATE OF MAILING

I hereby certify that on November 6, 1998, a true and correct copy of the foregoing ORDER was deposited in the United States mail to the parties listed below:

ALAN HENNEBOLD
INDUSTRIAL COMMISSION OF UTAH
160 E 300 S STE 300
P O BOX 146611
SALT LAKE CITY UT 84114-6611

MICHAEL E DYER
BLACKBURN & STOLL LC
77 W 200 S STE 400
SALT LAKE CITY UT 84101-1609

and a true and correct copy of the foregoing ORDER was hand delivered to a personal representative of:

JULIA D'ALESANDRO
COURT OF APPEAL
450 S STATE ST
PO BOX 140230-0230
SALT LAKE CITY UT UT 84114-0230

Dated this November 6, 1998.

By /s/ Susan E. Richards
Deputy Clerk

Case No. 981422

UTAH COURT OF APPEALS

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| | | |
|---|---|---|
| Daniel Scott Cox,<br>Petitioner,<br>v.<br>Utah State Industrial Commission; Proform Fitness/Weslo and/or Liberty Mutual Insurance Company,<br>Respondents. | ) | REMITTITUR<br>Case No. 970721-CA<br>(Filed Aug. 18, 1998) |

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This cause having been heretofore submitted and the Court being sufficiently advised in the premises, and the MEMORANDUM DECISION having been issued, the matter is hereby remitted.

This August 18, 1998

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Memorandum Decision Issued: June 4, 1998

Record: 8 VOLs

CERTIFICATE OF MAILING

I hereby certify that on August 18, 1998, a true and correct copy of the foregoing REMITTITUR was deposited in the United States mail to the parties listed below:

Daniel Scott Cox
Pro Se
3480 S 300 E #13
Salt Lake City UT 84115

Michael E. Dyer
Blackburn & Stoll
Attorney for Respondents
77 W 200 S
Salt Lake City UT 84101-1609

Utah Labor Commission
Alan Hennebold
160 E 300 S
PO Box 146615
Salt Lake City UT 84114-6615

and a true and correct copy of the foregoing REMITTITUR was deposited in the United States mail to the trial court listed below:

Original Proceeding in this Court

Dated this 18th day of August, 1998.

By /s/ Erin Harding
Deputy Clerk

Case No. 970721-CA